PETER B. MORRISON (SBN 230148)
peter.morrison@skadden.com
VIRGINIA F. MILSTEAD (SBN 234578)
virginia.milstead@skadden.com
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
300 South Grand Avenue, Suite 3400
Los Angeles, California 90071
Telephone: (213) 687-5000
Facsimile: (213) 687-5600

JOHN NEUKOM (SBN 275887)
john.neukom@skadden.com
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
525 University Avenue, Suite 1400
Palo Alto, California 94301
Telephone: (650) 470-4500
Facsimile: (650) 470-4570

Attorney for Defendants
Ripple Labs Inc., XRP II, LLC, Bradley Garlinghouse, Christian Larsen, Ron Will, Antoinette O'Gorman, Eric van Miltenburg, Susan Athey, Zoe Cruz, Ken Kurson, Ben Lawsky, Anja Manuel, and Takashi Okita

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

IN RE RIPPLE LABS INC. LITIGATION	CASE NO.: 4:18-cv-06753-PJH
This Document Relates To: ALL ACTIONS.	**(1) DEFENDANTS' OMNIBUS MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PLAINTIFF AVNER GREENWALD'S AND VLADI ZAKINOV'S AND DAVID OCONER'S MOTIONS TO REMAND;** **(2) DECLARATION OF VIRGINIA F. MILSTEAD IN SUPPORT THEREOF (filed under separate cover) and;** **(3) [PROPOSED] ORDER (lodged under separate cover).** Date: February 13, 2019 Time: 9:00 a.m. Dep't.: 3 Judge: Hon. Phyllis J. Hamilton

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

CASES **PAGE(S)**

STATUTES

RULES

OTHER AUTHORITIES

Defendants Ripple Labs Inc. ("Ripple"), XRP II, LLC ("XRP II"), Bradley Garlinghouse, Christian Larsen, Ron Will, Antoinette O'Gorman, Eric van Miltenburg, Susan Athey, Zoe Cruz, Ken Kurson, Ben Lawsky, Anja Manuel, and Takashi Okita (collectively, "Defendants") respectfully submit this Omnibus Opposition to Plaintiffs' Motions to Remand (ECF 17, 18).

ISSUES TO BE DECIDED

1. Whether removal was proper because the consolidation of two actions by the Superior Court of California, County of San Mateo ("San Mateo Superior Court") created minimal diversity among the parties, making this action removable under the Class Action Fairness Act ("CAFA"), 28 U.S.C. §§ 1332(d), 1453.

2. Whether the "voluntary-involuntary rule" applies when an order of consolidation creates the basis for federal jurisdiction and, if it does apply, whether the rule was satisfied by Plaintiffs' entry into a stipulation expressly contemplating consolidation, including consolidation of removed actions.

MEMORANDUM OF POINTS AND AUTHORITIES

I. PRELIMINARY STATEMENT

This consolidated putative class action ("Action") concerns Defendants' alleged sales of a virtual currency—XRP—"to the general public through global, online cryptocurrency exchanges." (Ex. A ¶¶ 29, 31; Ex. B ¶¶ 39, 41, 79.)[1] Raising the misguided theory that XRP is a "security" under state and federal securities law, Plaintiffs each filed separate actions in San Mateo Superior Court. Two Plaintiffs (Zakinov and Oconer) alleged violations of the securities qualification requirements of the California Corporations Code ("Corporations Code"), purportedly on behalf of California citizens who purchased XRP. Another Plaintiff (Greenwald) alleged violations of the registration requirements of the federal Securities Act of 1933 ("Securities Act"), purportedly on behalf of a global class of all purchasers of XRP since July 3, 2015. As is routine with respect to overlapping securities class actions, on October 31, 2018, the state court consolidated the actions for all purposes.

Under both California and Ninth Circuit law, the consolidation of the Corporations Code and Securities Act actions merged the parties and pleadings into one action. Such consolidation created

[1] All references to lettered exhibits refer to exhibits attached to the Notice of Removal (ECF 2.) All references to numbered exhibits refer to exhibits attached to the Declaration of Virginia F. Milstead. All emphases are added and citations and internal quotations omitted unless otherwise indicated.

"minimal diversity" and joined state and Securities Act claims, rendering the consolidated action removable under CAFA. Defendants then promptly removed the consolidated action.

While Defendants' previous removals of related actions (including the Greenwald action consolidated herein) turned on the applicability of the removal bar in Section 22(a) of the Securities Act to removals under CAFA, Section 22(a) is not at issue here. Plaintiffs do not dispute that if the consolidation was complete and the complaints are assessed together, CAFA's requirements are satisfied, and the Securities Act presents no barrier to removal. See Coffey v. Ripple Labs Inc., 333 F. Supp. 3d 952 (N.D. Cal. 2018). Instead, Plaintiffs make two central arguments in their attempt to defeat federal jurisdiction: that (i) the state court did not really mean to consolidate the cases, as consolidation was not proper; and (ii) consolidation was not Plaintiffs' idea.

As for the first argument, Plaintiffs posit a series of alternative, mutually exclusive theories, all in an effort to evade federal jurisdiction: (i) the consolidation order was "inadvertent" or "temporary"; (ii) if the consolidation order was deliberate, it was invalid; (iii) if the consolidation order was valid, it only ordered consolidation for trial, not complete consolidation; and (iv) if the consolidation order did completely consolidate the cases, it had the effect, not of completely consolidating the actions, but of "supersed[ing]" or "null[ifying]" one of them. None of these arguments has merit.

Notably, "the Court's role 'is not to decide whether it was proper for the state court to consolidate the actions, but whether the consolidation affects the Court's jurisdiction.'" Unifoil Corp. v. S.E. Personnel Leasing, Inc., 2018 WL 4676044, at *2 (D.N.J. Sept. 28, 2018). Here, the consolidation did affect the Court's jurisdiction, and this Court's focus must be on how that consolidation affects jurisdiction, rather than analyzing whether the cases should have been consolidated in the first instance.

However, to the extent that this Court considers the propriety of the underlying consolidation, consolidation of these actions was appropriate for several reasons. First, consolidation is within the state court's discretion, and sua sponte consolidations, like the consolidation here, are common in California, reflecting a judge's inherent authority to promote judicial economy. Plaintiffs are incorrect that a court may only consolidate actions after a noticed motion. Second, the cases consolidated here are substantially similar, in issues, allegations, claims, parties, and alleged damages. Indeed, Plaintiff

Greenwald argued *to this Court* in his prior motion to remand that the consolidated actions share common questions of fact or law and that this Court should remand his action so that it could be coordinated with the Corporations Code actions.[2] (See Ex. 4 at 5:14-6:5.) Now that they have been consolidated, Plaintiffs pivot, arguing that these cases are too different for consolidation.

Because the state court validly and completely consolidated the actions, "the allegations of the complaints can be treated as one pleading." People ex rel. Camil v. Buena Vista Cinema, 57 Cal. App. 3d 497, 500 (1976). Plaintiffs do not dispute this point of law or that, when applied here, it means this Action became removable. Instead, Plaintiffs argue that the Securities Act action was "superseded" when it was consolidated with the Corporations Code actions and thus no longer exists. As such, all that remains is a consolidated action with a California class and state law claims, and this Court lacks jurisdiction. Plaintiffs' argument finds no support in the state court's orders. Moreover, it contradicts how consolidation works. Consolidation combines the separate actions into one, but each part of each action survives the consolidation; it does not extinguish an action entirely.

As for Plaintiffs' second argument—that removal is improper because consolidation was not a "voluntary act" by Plaintiffs—that argument fails as a matter of law and fact. Courts allow removal after consolidation, even when the consolidation was ordered sua sponte or at the defendant's request. See, e.g., In re Methyl Tertiary Butyl Ether ("MTBE") Prods. Liab. Litig., 399 F. Supp. 2d 340, 355 (S.D.N.Y. 2005). Every case Plaintiffs cite purporting to require a "voluntary act" arises in a different context and is not applicable—either removal of "mass actions" under CAFA (which is not this case) or removal after dismissal of a non-diverse defendant created diversity (which is also not this case).

Regardless, Plaintiffs did engage in a "voluntary act." Before the Securities Act action was consolidated with the Corporations Code actions, the Corporations Code actions were consolidated pursuant to a stipulation of the parties. As part of that stipulation, Plaintiffs stipulated that all related actions that may come before the court in the future may also be consolidated, including remanded actions. (Ex. E ¶¶ 14, 15.) Plaintiffs agreed in advance to a mandatory stipulation contemplating consolidation of future related actions; they should not now be heard to complain that such

[2] While Greenwald argued in his motion to remand that his case should be coordinated with the Corporations Code actions, coordination is not available for cases pending in the same county. See Cal. Civ. Proc. Code § 404. Consolidation is the mechanism for joining cases pending in the same court.

consolidation was not "voluntary."

II. FACTUAL BACKGROUND

A. Plaintiffs Filed Substantially Identical Actions In California State Court

On May 3, 2018, Plaintiff Ryan Coffey filed Coffey v. Ripple Labs Inc. et al., No. CGC-18-566271 ("Coffey"), a putative class action alleging violations of state and federal securities laws in San Francisco County Superior Court, purporting to sue on behalf of a global class of XRP purchasers. (Ex. 1.) On June 1, 2018, Defendants removed Coffey to this Court, and Coffey moved to remand. On August 10, 2018, this Court denied Coffey's motion, reasoning that CAFA's removal requirements were satisfied, and because Coffey asserted both Securities Act claims and Corporations Code claims, the so-called "removal bar" in Section 22(a) of the Securities Act, 15 U.S.C. § 77v(a), did not bar removal. See Coffey, 333 F. Supp. 3d 952. On August 22, 2018, Coffey dismissed his suit.

On June 5, 2018, a month after Coffey was removed, Plaintiff Zakinov filed Zakinov v. Ripple Labs Inc. et al., No. 18-CIV-02845 ("Zakinov") in San Mateo Superior Court, a duplicative action subsumed within Coffey. The putative class in Zakinov included "California citizens who purchased or otherwise acquired XRP from January 1, 2013 to the present." (Ex. C ¶ 44.) Like Coffey, Zakinov asserted violations of the Corporations Code against three defendants: Ripple, XRP II and Garlinghouse, and sought rescission of all XRP purchases and/or damages. (Id. ¶¶ B, D.)

On June 27, 2018, two months after Coffey was removed, Plaintiff Oconer filed Oconer v. Ripple Labs Inc. et al., No. 18-CIV-03332 ("Oconer") in San Mateo Superior Court, a duplicative action also subsumed within Coffey. The putative class included "all citizens of California who purchased XRP." (Ex. D ¶ 73.) Oconer asserted claims under the same sections of the Corporations Code as Coffey and Zakinov (id. ¶¶ 79-91), against the same Defendants (id. ¶¶ 10-12), and sought the same relief (id. ¶¶ C, E).

On July 3, 2018, Plaintiff Greenwald filed Greenwald v. Ripple Labs Inc. et al., No. 18-CIV-03461 ("Greenwald"), a third action subsumed within Coffey. Greenwald, also filed in San Mateo Superior Court, was purportedly brought on behalf of "all persons or entities who purchased XRP from July 3, 2015 through the present." (Ex. B ¶¶ 2, 87.) Greenwald asserted claims under the Securities Act (id. ¶¶ 94-110), against Ripple, XRP II and Garlinghouse, as well as certain officers and directors

of Ripple (id. ¶¶ 15-27), and sought the same relief as Coffey, Zakinov, and Oconer. On August 8, 2018, Defendants removed Greenwald to this Court pursuant to CAFA.

All four actions make the exact same claim based on the same alleged facts—that XRP is a security that had to be registered with the Securities & Exchange Commission ("SEC") (thereby becoming "qualified" in California).

B. The Duplicative Actions Are Consolidated And Removed To This Court

On August 30, 2018, pursuant to the parties' "STIPULATION AND [PROPOSED] ORDER CONSOLIDATING RELATED ACTIONS AND RELATED MATTERS" ("Stipulation"), Judge Richard H. DuBois of the San Mateo Superior Court ordered Zakinov and Oconer "consolidated for all purposes, including pre-trial proceedings and trial." (Ex. E ("First Consolidation Order") ¶ 6.) The consolidated action was renamed In re Ripple Labs Inc. Litigation, Lead Case No. 18-CIV-02845 ("Ripple Labs").

Plaintiffs knew of the existence of Greenwald and proposed the Stipulation, which specifically provided that it "***shall apply*** to each case, arising out of the same or similar transactions and/or events as [Zakinov and Oconer] which [are] currently pending in, subsequently filed in, ***remanded to***, or transferred to this Court." (Id. ¶ 14.) "When a case which properly belongs as part of [Ripple Labs] is hereafter or has been filed in, ***remanded to***, or transferred to this Court, ***counsel for the parties shall*** call such filing, ***remand***, or transfer to the attention of the clerk of this Court ***for purposes of moving the Court for an order consolidating such case(s)*** with [Ripple Labs.]" (Id. ¶ 15.) Thus, the parties agreed that if a related action came before the court, they would "call such filing" to the Court's attention for one particular, shared, and non-optional purpose: to serve as a motion to consolidate or in order to obtain an order consolidating the remanded action with Ripple Labs.

On October 15, 2018, Plaintiffs Zakinov and Oconer filed the Consolidated Complaint in Ripple Labs on behalf of a putative "class consisting of all citizens of California who purchased XRP." (Ex. A ¶ 80.) Plaintiffs asserted claims under sections 25110, 25503, and 25504 of the Corporations Code (id. ¶¶ 86-98), against Ripple, XRP II and Garlinghouse (id. ¶¶ 12-14), and sought rescission of all XRP purchases and/or damages (id. ¶¶ C, E).

On October 15, 2018, this Court remanded Greenwald, reasoning that, unlike Coffey,

Greenwald asserted only Securities Act, and no state law, claims. See Greenwald v. Ripple Labs Inc., 2018 WL 4961767 (N.D. Cal. Oct. 15, 2018) appeal filed, No. 18-801-147 (9th Cir. Oct. 25, 2018). Therefore, while CAFA's removal requirements were met, this Court concluded removal was barred under the Securities Act. Id.

Following remand, on October 25, 2018, Defendants filed a Notice of Related Case in the San Mateo Superior Court indicating that Greenwald is related to Ripple Labs because it "involves the same parties and is based on the same or similar claims," "arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact," and "is likely for other reasons to require substantial duplication of judicial resources if heard by different judges." (Exs. 2-3.) Defendants served the Notice of Related Cases on counsel for Plaintiffs. (Id.) Plaintiffs had five days to file a response "opposing the notice." Cal. R. Ct. 3.300(g). No Plaintiff opposed the Notice.

On October 31, 2018, Judge DuBois ordered Greenwald related to and consolidated with Ripple Labs (Greenwald and Ripple Labs collectively, the "Action"). (Ex. F (the "Second Consolidation Order").) Judge DuBois observed that the Notice of Related Cases had "been filed and served" and that "no opposition or objection" was filed in response. (Ex. F ¶ 1.) Thus, Judge DuBois ordered that "pursuant to the order in Master File No. 18CIV02845 consolidating related class actions [e.g., the First Consolidation Order], . . . the case of *Greenwald vs. Ripple Labs Inc. 18CIV03461* is ordered CONSOLIDATED as part of Master File No. 18CIV02845." (Id. ¶ 2.) The Court vacated dates for a Complex Status Conference and Case Management Conference in Greenwald and ordered that a single Case Management Conference set in Ripple Labs go forward. (Id. ¶ 3.)

Given that orders consolidating overlapping class actions are routine and that the Stipulation and First Consolidation Order made clear that related actions, including remanded actions, would be consolidated with Ripple Labs, there is no basis to question the deliberateness, validity, completeness, or effect of the Second Consolidation Order, as Plaintiffs do here. Pursuant to this Court's reasoning in Coffey, the consolidation of Greenwald with Ripple Labs made the entire, consolidated Action removable under CAFA. Accordingly, Defendants timely removed the Action.

C. Greenwald And Ripple Labs Are Nearly Identical

Illustrating the propriety of the Court's Second Consolidation Order, the allegations in Greenwald and Ripple Labs are nearly identical. In particular:

Claims: Greenwald and Ripple Labs assert equivalent federal and state claims under the Securities Act and the Corporations Code governing the registration/qualification and sale of securities and imposing "control person" liability on violators of securities laws. (Compare Ex. A ¶¶ 86-98 with Ex. B ¶¶ 94-110.)

Allegations: Both complaints are premised on the same alleged misconduct: that Defendants promoted and sold XRP, a purported security that Defendants were required to register with the SEC, and their failure to do so harmed Plaintiffs. (Compare Ex. A ¶¶ 1-2 with Ex. B ¶ 1.) Both actions make multiple allegations ***verbatim***. (Compare Ex. A ¶ 16 with Ex. B ¶ 33; Ex. A ¶ 29 with Ex. B ¶ 53; Ex. A ¶ 34 with Ex. B ¶ 42; Ex. A ¶ 35 with Ex. B ¶ 43; Ex. A ¶ 36 with Ex. B ¶ 44; Ex. A ¶ 42 with Ex. B ¶ 60; Ex. A ¶ 43 with Ex. B ¶ 61; Ex. A ¶ 54 with Ex. B ¶ 76.) Moreover, the allegations in support of the theory that XRP is a security are materially the same:

- Defendants allegedly sold XRP in an "ongoing initial coin offering ('ICO')" that began in 2013. (Compare Ex. A ¶ 5 with Ex. B ¶¶ 6, 38.)
- Defendants allegedly sell XRP on cryptocurrency exchanges to "fund [Ripple's] operations and promote the network." (Compare Ex. A ¶ 63 with Ex. B ¶ 31.)
- Unlike bitcoin, XRP is not "mined." (Compare Ex. A ¶ 17 with Ex. B ¶ 29.) Ripple allegedly created all 100 billion XRP. (Id.) Ripple's founders allegedly hold twenty billion XRP, and Ripple put fifty-five billion XRP into an escrow account. (Compare Ex. A ¶¶ 17, 25 with Ex. B ¶¶ 29, 45.)
- The XRP ledger is allegedly not "decentralized" because it uses "trusted nodes" to validate transactions. (Compare Ex. A ¶¶ 55-56 with Ex. B ¶ 34.)
- Plaintiffs "reasonably expected to derive profits from their ownership of XRP." (Compare Ex. A ¶ 4 with Ex. B ¶ 3.)
- Defendants made statements about XRP and Ripple's products and services on various media and social media outlets to affect demand for, and the market price of, XRP. (Compare Ex. A ¶¶ 29-50 with Ex. B ¶¶ 39-51, 53-55, 62-77.)

Parties: The purported class in Ripple Labs, "consisting of all citizens of California who purchased XRP" (Ex. A ¶ 80), is subsumed within the purported class in Greenwald, which is "all persons or entities who purchased XRP from July 3, 2015 through the present." (Ex. B ¶ 87.) Both actions name the same Defendants—Ripple, XRP II and Mr. Garlinghouse—with Greenwald

additionally naming individual officers and directors as Defendants. (Compare Ex. A ¶¶ 12-14 with Ex. B ¶¶ 15-27.)

Relief: Both actions allege that the class members are seeking recovery for Defendants' alleged failure to register XRP with the SEC. (Compare Ex. A ¶ 1 with Ex. B ¶ 1.) Both actions seek declaratory relief that Defendants offered and sold unregistered securities, compensatory damages, rescission of XRP sales, and injunctive relief. (Compare Ex. A ¶¶ A-F with Ex. B ¶¶ A-H.)

III. CAFA INVOKES A PRESUMPTION IN FAVOR OF, NOT AGAINST, REMOVAL

Plaintiffs attempt to sow enough confusion about the nature of the Second Consolidation Order that a purported presumption against removal will tip the balance in their favor. (ECF 18 at 7:1-8.) Plaintiffs' efforts are misguided. The Supreme Court in Dart Cherokee Basin Operating Co., LLC v. Owens, 135 S. Ct. 547, 554 (2014), held that "no antiremoval presumption attends cases invoking CAFA, which Congress enacted to facilitate adjudication of certain class actions in federal court." Instead, as the Ninth Circuit made clear, CAFA expresses "Congress's intent to 'strongly favor the exercise of federal diversity jurisdiction of class actions with interstate ramifications.'" Jordan v. Nationstar Mortg., LLC, 781 F.3d 1178, 1179 (9th Cir. 2015). As such, whether interpreting CAFA's substantive requirements or, as here, "removal procedure under [28 U.S.C.] § 1446," the court must apply a "liberal construction" "in favor of removal," not a presumption against removal. Id. at 1184. As this Action—"involving a proposed international class and issues of first impression regarding the federal securities laws applicability to a nascent technology," Coffey, 333 F. Supp. 3d at 962—falls squarely within the purpose of CAFA, such a liberal construction is especially warranted here.

IV. CONSOLIDATION MADE THIS ACTION REMOVABLE PURSUANT TO CAFA

Notably, Plaintiffs do not dispute that, if the complaints in Greenwald and Ripple Labs are viewed collectively—and, as shown below, they should be—this Action is removable under CAFA. Under CAFA, a class action may be removed if (1) the action purports to be a "class" action brought on behalf of 100 or more members; (2) any member of a plaintiff class is a citizen of a state or foreign country and any defendant is a citizen of a state (or vice versa); and (3) the amount in controversy exceeds $5 million. See 28 U.S.C. §§ 1332(d), 1453(b). As the Action is (1) purportedly brought on behalf of classes, including an international class, consisting of "thousands" of members (Ex. A ¶¶ 80-

81; Ex. B ¶¶ 14, 87, 89); (2) against California and non-California citizens (ECF 2 ¶ 20); and (3) seeks rescission of at least $167.7 million in sales of XRP (Ex. A ¶ 28; Ex. B ¶ 52), CAFA's requirements are met. Because state law claims are asserted with Securities Act claims, Plaintiffs do not even argue that the bar on removal of Securities Act claims applies. See Coffey, 333 F. Supp. 3d at 960. Instead, Plaintiffs seek to attack the Second Consolidation Order collaterally. Plaintiffs' attack is meritless.

A. This Court Should Not Consider The Propriety Of The Underlying Consolidation

As an initial matter, "the Court's role 'is not to decide whether it was proper for the state court to consolidate the actions, but whether the consolidation affects the Court's jurisdiction.'" Unifoil, 2018 WL 4676044, at *2 (quoting Amadu v. Bradshaw, 2016 WL 3676474, at *2 (D.N.J. July 11, 2016)). Therefore, Plaintiffs' unsupported conclusion that the Second Consolidation Order "was an administrative decision not reflective of a considered determination regarding consolidation" should not affect the Court's consideration of jurisdiction. (ECF 17 at 11-13.) Moreover, even if the propriety of consolidation were a factor for this Court to consider (which it is not), Plaintiffs offer no reason to doubt the careful consideration Judge DuBois regularly gives to his orders, particularly considering the overwhelming overlap among the actions. The Court should thus reject Plaintiffs' argument that removal was improper because the Second Consolidation Order was "inadvertent," "improper," or otherwise invalid. (ECF 17 at 4:3-4, 7:14-15; ECF 18 at 7:13, 8:11.)

B. The Second Consolidation Order Validly Consolidated The Actions

Even if this Court considers the propriety of the underlying consolidation (which it should not do), Plaintiffs' contention that "California law mandates a stipulation or a motion" before consolidation can occur is simply wrong. (ECF 17 at 6:18-22, 8:3-7; ECF 18 at 7:11-13, 8:22-27.) California courts have discretion to consolidate actions sua sponte and regularly do so. See e.g., Cal. State Univ., Fresno Ass'n v. County of Fresno, 9 Cal. App. 5th 250, 255 n.1 (2017) (on appeal, noting that the "court ordered the cases consolidated on its own motion"); Heritage Pac. Fin., LLC v. Monroy, 215 Cal. App. 4th 972, 987 (2013) (noting that "on its own motion[, the court of appeals] consolidated both of Heritage's appeals"); Savadians v. Toledo, 2009 WL 7165886 (Super. Ct. Alameda Cty. Dec. 9, 2009) ("On the court's own motion, this action is consolidated with two related cases."); Bryant v. Matson Navigation Co., 2008 WL 7759184 (Super. Ct. Alameda Cty. Nov. 6, 2008) ("On the court's own

motion, this action is consolidated for all purposes with another case involving many of the same issues."); Taylor v. Belen, 2006 WL 6049034 (Super. Ct. Alameda Cty. June 15, 2006) ("The Court, on its own motion, consolidates this action for all purposes with the related matter."); Johnson v. Vowell, 2003 WL 25454210 (Super. Ct. San Francisco Cty. Nov. 24, 2003) ("[O]n the Court's own motion, the Court orders that case number 421113 is hereby consolidated with case number 423566 for all purposes."). In fact, the California Rules of Court ***expressly*** authorize the court to make orders that "[f]acilitate the management of class actions through consolidation." Cal. R. Ct. 3.767(a)(4).

Plaintiffs cite Sutter Health Uninsured Pricing Cases, 171 Cal. App. 4th 495 (2009), for the proposition that "[a]bsent a stipulation to consolidate, a *noticed* and *written* motion to consolidate is required." (ECF 17 at 6:21-23; ECF 18 at 7:13-15.) However, Sutter Health is completely inapposite, as it did not involve or address a sua sponte consolidation. Rather, it involved a party who filed a motion to intervene in a coordinated proceeding and then argued on appeal that the "trial court should have treated his motion [to intervene] as a motion to *consolidate*." Id. at 514. The court of appeal rejected this argument, reasoning that the party's "stray citation to a rule of court addressing a coordination trial court's duties to manage proceedings, buried at the end of a clearly-captioned 'Motion to Intervene,' [did] not convert that motion to intervene into a motion to consolidate," and instead the party needed either a stipulation or a motion to *consolidate*. Id. Plaintiffs' only other case, Sanchez v. Superior Court, 203 Cal. App. 3d 1391, 1396 (1988) (ECF 18 at 11:20-21), likewise did not address, let alone disapprove of, sua sponte consolidation.[3]

In addition, the Stipulation—which is called "STIPULATION AND [PROPOSED] ORDER CONSOLIDATING RELATED ACTIONS ***AND RELATED MATTERS***"—provides that, ***without any further action***, the First Consolidation Order "shall" apply to related cases "remanded to" the court. (Ex. E ¶ 14.) This indisputably included Greenwald, of which Plaintiffs were aware at the time

[3] Plaintiffs also cite a Florida state court case, Morris-Edge Masonry, Inc. v. Tonn & Blank, Inc., 461 So. 2d 1036 (Fla. Dist. Ct. App. 1985), for the proposition that sua sponte consolidation violates due process. (ECF 17 at 8:10-13; ECF 18 at 9:2-4.) Regardless of Florida law on the subject, California courts regularly consolidate cases sua sponte. And Morris-Edge considered a consolidation that "had the effect of transferring appellant's action to another county" when the plaintiff "never had notice of the trial court's intention to consider consolidation sua sponte." Id. at 1037. Here, consolidation had no effect on venue. And the Stipulation and First Consolidation Order, coupled with the Notice of Related Cases, put Plaintiffs on notice that the cases would be consolidated.

they stipulated. Plaintiffs ignore this language in their Motions.

The Stipulation further provides that the "***parties shall***" bring related actions to the court's attention "***for purposes of moving the Court for an order consolidating*** such case(s) with [Ripple Labs]." (Ex. E ¶ 15.) The Stipulation thus ***requires*** the ***parties*** to bring related actions to the court's attention, and the ***purpose*** of that requirement is that it serves as a motion to consolidate or result in consolidation. The Second Consolidation Order is not "in error" (ECF 18 at 7:13) just because Judge DuBois decided the formality of a motion was unnecessary in light of (i) Plaintiffs' failure to object to Defendants' Notice of Related Cases; (ii) their stipulation that the First Consolidation Order applied to related cases; and (iii) their stipulation that the parties would bring related cases to the court's attention for the purpose of moving the court for an order consolidating the cases.

In an effort to sidestep the language of the First Consolidation Order, Plaintiffs argue that "the parties did not stipulate that [Greenwald] could or should be consolidated with [Ripple Labs]." (ECF 18 at 8:22-24.) This is wrong. The Stipulation expressly states that it "shall" apply to related cases "remanded to" the court. Plaintiffs also argue that the Stipulation requires the parties to "mov[e] the Court for an order consolidating such case(s)," but they omit the first part of the sentence they purport to quote, which provides that the "parties shall" bring related cases to the attention of the court "***for purposes of moving***" the court for a consolidation order. (ECF 17 at 6:17-18; ECF 18 at 5:1-2.) Furthermore, Plaintiffs' contention that the Stipulation required a noticed motion makes little sense. If a noticed motion were required, the paragraphs of the Stipulation pertaining to related cases (Ex. E ¶¶ 14, 15) would be meaningless because no stipulation or order would be needed to require the parties to follow the Code of Civil Procedure. Thus, each of Plaintiffs' arguments fail.

C. The Second Consolidation Order Was Appropriate On Its Merits

Plaintiffs' attack on the merits of the consolidation also fails. Plaintiffs summarily assert that the actions "involve[] vastly different classes and different claims" and, as such, "consolidation, and removal, would be inappropriate." (ECF 17 at 7:2-3; ECF 18 at 9:7.) Greenwald's position that Greenwald and Ripple Labs are "vastly different" contradicts what he previously told this Court. In his motion to remand, he argued that Greenwald was so similar to Ripple Labs that it should be remanded for "coordination of dispositive motions and discovery." (Ex. 4 at 6:4-5.) In particular, he argued:

> *Zakinov* and *Oconer* allege state law claims on behalf of a class of California purchasers of XRP during the same class period alleged in the instant complaint, July 3, 2015 through the present. Like the instant case, *Zakinov* and *Oconer* allege that XRP should have been registered securities—but under California law, rather than federal law. Demonstrating the similarity of the issues raised, *Zakinov* and *Oconer* point to federal SEC guidance in support of their position. Many of the factual allegations in *Zakinov* and *Oconer* overlap as they both relate to the creation, sale, and solicitation of XRP.

(Id. at 5:21-6:4 (citations omitted).)

As Greenwald conceded, consolidation is the only conclusion that makes sense.[4] Both Greenwald and Ripple Labs are premised on the same alleged misconduct: that Defendants promoted and sold XRP, a purported security that Defendants were required to register with the SEC, and their failure to do so harmed Plaintiffs. (Compare Ex. A ¶¶ 1-2 with Ex. B ¶ 1.) Both actions even make multiple allegations ***verbatim***. (Compare Ex. A ¶ 16 with Ex. B ¶ 33; Ex. A ¶ 29 with Ex. B ¶ 53; Ex. A ¶ 34 with Ex. B ¶ 42; Ex. A ¶ 35 with Ex. B ¶ 43; Ex. A ¶ 36 with Ex. B ¶ 44; Ex. A ¶ 42 with Ex. B ¶ 60; Ex. A ¶ 43 with Ex. B ¶ 61; Ex. A ¶ 54 with Ex. B ¶ 76.) The allegations in support of the theory that XRP is a security also are materially the same. (See supra Part II.C.)

The purported class in Ripple Labs, "consisting of all citizens of California who purchased XRP" (Ex. A ¶ 80), is subsumed within the purported class in Greenwald, which is brought on behalf of "all persons or entities who purchased XRP from July 3, 2015 through the present" (Ex. B ¶ 87). Therefore, both actions seek rescission of many of the same transactions, and consolidation is appropriate to prevent double recovery. See Jefferson St. Ventures, LLC v. City of Indio, 236 Cal. App. 4th 1175, 1206 (2015) (observing that consolidation is "particularly appropriate" when it avoids "concerns about double recovery," and actions involve, like here, "the same property, and many (if not all) of the same damages"). Both actions further name the same Defendants—Ripple, XRP II and Garlinghouse—with Greenwald additionally naming individual officers and directors as Defendants. (Compare Ex. A ¶¶ 12-14 with Ex. B ¶¶ 15-27.) While Plaintiffs argue that these Defendants were not parties to the Stipulation (ECF 18 at 9:5-6), these Defendants are represented by the same counsel as

[4] Coordination is available only for complex actions pending in *different* counties, while consolidation is the appropriate mechanism for joining cases pending in the *same* county. See Robert I. Weil, et al., Cal. Practice Guide: Civ. Proc. Before Trial § 12:370 (2018). However, the standard for coordination and consolidation is the same: the actions share common questions of fact or law. See Cal. Civ. Proc. Code §§ 404, 1048(a). Thus, by arguing for coordination, Greenwald conceded that the consolidated actions share common questions of fact and law and are sufficiently similar that they should be joined.

their co-defendants, and they favor consolidation.

As Greenwald previously argued, Greenwald and Ripple Labs assert equivalent federal and state claims under the Securities Act and the Corporations Code governing the registration/qualification and sale of securities and imposing "control person" liability on violators of securities laws. (Compare Ex. A ¶¶ 86-98 with Ex. B ¶¶ 94-110; Ex. 4 at 5:23-24.) Indeed, the Corporations Code claims asserted in Ripple Labs are modeled after the Securities Act claims asserted in Greenwald. See Loss, Seligman & Paredes, Securities Regulation §§ 11.B.2, 11.B.3 (2018). Thus, among other common requirements, both impose liability for sales of unregistered securities to the person acquiring the alleged security from the seller. Compare Cal. Corp. Code §§ 25110, 25111(a), 25503 with 15 U.S.C. §§ 77e, 77*l*(a)(1). The definition of "security" in the Corporations Code is also patterned after the definition of "security" in section 2(a)(1) of the Securities Act, and both federal and California courts have applied the same legal test to determine if something is a security. See Cal. Corp. Code § 25019; 15 U.S.C. § 77b(a)(1); SEC v. W. J. Howey Co., 328 U.S. 293, 297 (1946); Moreland v. Dep't of Corps., 194 Cal. App. 3d 506, 512 (1987).

Moreover, both actions allege the same injury, namely recovery for Defendants' alleged failure to register XRP with the SEC. (Compare Ex. A ¶ 1 with Ex. B ¶ 1.) Both actions seek declaratory relief that Defendants offered and sold unregistered securities, compensatory damages, rescission of XRP sales, and injunctive relief. (Compare Ex. A ¶¶ A-H with Ex. B ¶¶ A-F.)

Contrary to Plaintiffs' unsupported assertions, courts regularly consolidate such overlapping putative class actions, even when there are some differences between the proposed classes, defendants, and claims asserted. See, e.g., Miller v. Ventro Corp., 2001 WL 34497752, at *4 (N.D. Cal. Nov. 28, 2001) (consolidating securities class actions even though they alleged different statutory violations, named different plaintiffs, named some different defendants, alleged different class periods, involved different remedies, and involved different evidentiary burdens); Aronson v. McKesson HBOC, Inc., 79 F. Supp. 2d 1146, 1150 (N.D. Cal. 1999) (similar).[5]

[5] None of Plaintiffs' cases (ECF 18 at 15:20-16:11) involves a court refusing to consolidate two class actions just because one putative class had a geographical limitation that made it a subset of the other class or because the actions asserted parallel state and federal securities claims. See Rochester Laborers Pension Fund v. Monsanto Co., 2010 WL 3842549, at *1 (E.D. Mo. Sept. 28, 2010) (denying consolidation where claims were brought ***against*** Monsanto in the securities action and ***on behalf of*** *(cont'd)*

Plaintiffs identify no impairment of their rights from consolidation. Instead, they suggest that there should be two separate trials on the common question of whether XRP is a security (ECF 18 at 9:8)—while imposing costs, inefficiencies, and the risk of inconsistent outcomes—simply because they want to avoid removal under CAFA. (ECF 17 at 7:6-9.) However, Plaintiffs cite no law that a desire to avoid CAFA removal is a relevant consideration for the consolidation of cases. Nor could they. Recall, the first suit filed—Coffey—asserted all the claims on behalf of all of the people covered by both the Greenwald and Ripple Labs actions. See Coffey, 333 F. Supp. 3d at 954. Yet each Plaintiff still filed his own action with some attempted variation in the claim or class definition that served no purpose, other than to try to avoid federal court and force Defendants to defend piecemeal cases. These types of duplicative class actions are precisely what CAFA was meant to address. See N.J. Carpenters Vacation Fund v. HarborView Mortg. Loan Tr. 2006-4, 581 F. Supp. 2d 581, 584-85 n.5 (S.D.N.Y. 2008) (noting that "CAFA was created to expand federal jurisdiction in class actions to address the gaming of the system to avoid litigating in the federal courts" and that "the fact that securities plaintiffs and their counsel file successive actions addressing the same issues echo the repeated Congressional concerns about nationwide impact and abusive filings").

Plaintiffs' cite to Moss Bros. Toy, Inc. v. Ruiz, 27 Cal. App. 5th 424 (2018) is misleading. (ECF 17 at 7:9-12.) In Moss Bros. the court affirmed the denial of a party's motion to intervene

---

(cont'd from previous page)

Monsanto in the derivative action); In re Bear Stearns Cos., Inc. Sec., Derivative, & Emp. Ret. Income Sec. Act (Erisa) Litig., 2009 WL 50132, at *4-5 (S.D.N.Y. Jan. 5, 2009) (denying consolidation where "Securities and ERISA Actions involve different parties, claims, burdens, pleading standards, losses, and insurance issues" and "potential conflicts between those claims asserted on behalf of Bear Stearns in the Derivative Action and those asserted against the Company in the Securities Actions"); In re Bank of Am. Corp. Sec., Derivative & Emp. Ret. Income Sec. Act (ERISA) Litig., 258 F.R.D. 260, 268 (S.D.N.Y. 2009) (consolidating the securities actions brought against company, the derivative actions brought on behalf of company, and the ERISA actions brought against company into three separately consolidated cases); In re Diebold Sec. Litig., 2006 WL 3023033, at *4 (N.D. Ohio Oct. 23, 2006) (same); see also Meeder v. Superior Tube Co., 72 F.R.D. 633, 636 (W.D. Pa. 1976) (denying consolidation and finding coordinated discovery would be more appropriate because "while the three complaints ar[o]se out of the same circumstances," there were differences in parties, allegations, and relief sought). Plaintiffs also cite Lighthouse Fin. Grp. v. Royal Bank of Scotland Grp., PLC, 902 F. Supp. 2d 329, 342 (S.D.N.Y. 2012), aff'd sub nom. IBEW Local Union No. 58 Pension Tr. Fund & Annuity Fund v. Royal Bank of Scotland Grp., PLC, 783 F.3d 383 (2d Cir. 2015), for the proposition that the court "declin[ed] even to consolidate two related federal securities class actions because, among other reasons, the 33 Act actions and 34 Act action contain 'different, claims, different class periods, and purports different classes.'" (ECF 18 at 15:22-27.) However, ***that quote is nowhere in that case***. The case is about a motion to dismiss a consolidated amended complaint which contained claims for violations of the Securities Act and the Securities Exchange Act.

because the party "had unreasonably delayed in applying to intervene." Id. at 430. After denial of its motion to intervene, the party filed a separate action and then moved to consolidate it with the action in which it had previously sought to intervene, but the trial court rejected this as an attempt to circumvent the court of appeals' ruling. Id. at 430-31. Moss Bros. has nothing to do with the situation at hand. Consolidating the Greenwald and Ripple Labs actions was well within Judge DuBois's discretion.[6]

D. The Second Consolidation Order Completely Consolidated The Actions

Plaintiffs' argument that Judge DuBois consolidated the actions "merely for 'purposes of trial'" is also meritless. (ECF 18 at 11:10.) In Hamilton v. Asbestos Corp., 22 Cal. 4th 1127, 1147-48 (2000), the California Supreme Court held that a trial court ordered complete consolidation where it ordered the cases consolidated under a single case number. Because the consolidation order "was not limited to a consolidation for trial" and instead simply stated that the cases were consolidated, the Court reasoned that "[t]his is the language of complete consolidation." Id. at 1148; see also City of Oakland v. Abend, 2007 WL 2023506, at *4 (N.D. Cal. July 12, 2007) (concluding that court completely consolidated cases when, although the order did not specify complete consolidation or consolidation for trial, the action proceeded under one case number).

Here, as in Hamilton, the Second Consolidation Order states that Greenwald "is ordered CONSOLIDATED as part of Master File No. 18CIV02845," the single case number for Ripple Labs. In so ordering, Judge DuBois referenced the First Consolidation Order, which explicitly effected a complete consolidation of Zakinov and Oconer "for all purposes, including pre-trial proceedings and trial," and set a single "Case Management Conference in the Master file" for all cases. (Ex. E ¶ 6; Ex. F ¶¶ 2-3.) Nothing suggests an intent to limit the scope of the consolidation, let alone states that consolidation is for trial only. Nor would there be any reason to limit consolidation, given the

[6] Plaintiffs also argue that the court should "sever" Greenwald and Ripple Labs because the Private Securities Litigation Reform Act ("PSLRA"), 15 U.S.C. § 77z-1, supposedly applies to Greenwald but not Ripple Labs. (ECF 18 at 16:8-11.) In fact, the PSLRA applies to the entire consolidated action. See SG Cowen Sec. Corp. v. U.S. Dist. Ct., 189 F.3d 909, 913 n.1 (9th Cir. 1999) (rejecting argument that PSLRA discovery stay did not apply when state law claims are asserted with federal securities claims); In re Trump Hotel S'holder Derivative Litig., 1997 WL 442135, at *2 (S.D.N.Y. Aug. 5, 1997) ("There is simply nothing in either the text or the legislative history of the PSLRA that suggests that Congress intended to except federal securities actions in which there happens to be both diversity of citizenship and pendent state law claims."). Hill v. The Tribune Co., 2005 WL 3299144 (N.D. Ill. Oct. 13, 2005) (ECF 18 at 16:8-11), did not involve state securities claims consolidated with federal securities claims; it involved only claims under the Employee Retirement Income Security Act.

extensive overlap between Greenwald and Ripple Labs and lack of prejudice from complete consolidation. Plaintiffs provide no support for their argument that Judge DuBois intended these cases—which will depend on the same witnesses and evidence—to remain separate for pre-trial proceedings, including discovery and class certification, only to be tried together, but with separate resulting judgments. And Greenwald previously argued that "coordination of dispositive motions and discovery makes sense in order to promote judicial economy." (Ex. 4 at 6:4-5.)

Plaintiffs also argue that Judge DuBois did not order complete consolidation because that may be ordered "only where the parties are identical." (ECF 18 at 11:10-12.) That is not correct. "[T]he fact that all the parties are not the same" does not preclude complete consolidation. Jud Whitehead Heater Co. v. Obler, 111 Cal. App. 2d 861, 867 (1952). The decision on which Plaintiffs rely, Sanchez, 203 Cal. App. 3d at 1396, itself observes that complete consolidation "may be utilized where the parties are identical"; it does not say that complete consolidation may be utilized *only* when the parties are identical. Nor does the consolidation statute require identical parties. See Cal. Civ. Proc. Code § 1048(a) (discussing only "a common question of law or fact" to support consolidation). Furthermore, Sanchez did not turn on the parties being different, but on their injuries being different. In Sanchez, the court concluded that consolidation was for trial only because the actions consolidated in that case, which, unlike here, kept their separate case numbers, were brought by unrelated people who were injured in the same traffic accident. Because they had different injuries, they "would presumably expect separate judgments." Sanchez, 203 Cal. App. 3d at 1396. Here, the actions are brought on behalf of completely overlapping classes that seek the same relief for the same purported injuries, and it is not reasonable to expect separate "pleadings, verdicts, findings and judgments," id., on the central, common question of whether XRP is a security.

E. The Second Consolidation Order Rendered The Action Removable

In California, when there is "a complete consolidation or consolidation for all purposes . . . the two actions are merged into a single proceeding under one case number and result in only one verdict or set of findings and one judgment." Hamilton, 22 Cal. 4th at 1147. After "actions are consolidated, . . . the allegations of the complaints can be treated as one pleading." Camil, 57 Cal. App. 3d at 500; see also Sanchez, 203 Cal. App. 3d at 1396 (stating "the pleadings are regarded as

merged"); 4 B.E. Witkin, California Procedure: Pleadings § 346 (5th ed. 2008) ("If the causes of action could have been joined, it is usually appropriate to order a complete consolidation, the separate actions becoming a single action, the separate pleadings being treated as part of one set, and a single verdict or judgment being given."). Thus, after consolidation, "the actions are viewed as if the same plaintiff or plaintiffs had filed a single complaint on joined causes of action against the same defendant or defendants." Id.

To determine whether removal is proper, courts consider a consolidated action as a single action. In Bridewell-Sledge v. Blue Cross of California, 798 F.3d 923, 925-26 (9th Cir. 2015), two putative class actions were filed in state court against the same defendants, on behalf of the same classes, asserting similar claims over the same alleged misconduct. The actions were consolidated "for all purposes" by the state court. Id. at 926. Defendants removed the consolidated class action pursuant to CAFA. Id. At issue was whether the "local controversy exception" to CAFA jurisdiction applied and barred removal, particularly, the requirement that in the "3-year period preceding the filing of that class action, no other class action has been filed asserting . . . similar factual allegations." Id. at 928. The plaintiffs argued that consolidation of the two actions "prior to removal resulted in a single consolidated class action, and, as such, no 'other class action' had been filed during the three-year period preceding the filing of the consolidated class action." Id. at 929. The defendants, however, argued that the exception did not apply because the actions should be considered separately, with one being filed before the other. Id.

The Ninth Circuit held removal was improper. It reasoned that "[u]nder California law, when two actions are consolidated 'for all purposes,' 'the two actions are merged into a single proceeding under one case number and result in only one verdict or set of findings and one judgment'" and "California law controls because 'we look to state law to determine when an action has been commenced under CAFA.'" Id. at 930. Accordingly, the Ninth Circuit concluded that "when examining whether [it] ha[d] federal jurisdiction over [action 1] and [action 2] under CAFA, it is necessary to view [action 1] and [action 2] as a single consolidated class action that was united originally, rather than as two separate class actions filed at different times." Id. Thus, "[w]hen viewed as a single consolidated class action . . . it [was] undisputed that no other similar class action was filed

against any of the defendants during the preceding three-year period;" CAFA's local controversy exception applied, and the entire consolidated action was remanded. Id.

Thus, based on Ninth Circuit precedent, this Court should consider the Greenwald and Ripple Labs actions as "a single consolidated class action that was united originally" in determining whether there is jurisdiction under CAFA. Id. at 930; see also Camil, 57 Cal. App. 3d at 500 (complaints in consolidated action are treated as one pleading); Abend, 2007 WL 2023506, at *3 (considering complaints together in determining whether removal was proper); Amadu, 2016 WL 3676474, at *3 (concluding that "actions that are initiated separately and subsequently consolidated become a single action," and thus consolidation of the two actions destroyed diversity). When the complaints are considered together here, Plaintiffs do not—nor can they—dispute that the Action is removable.[7]

Plaintiffs instead argue that the Stipulation and First Consolidation Order rendered the Greenwald complaint "null" because the Consolidated Complaint is the sole operative complaint. (ECF 17 at 9:12-14, 10:4-6; ECF 18 at 11:22-12:10.) However, the Stipulation and First Consolidation Order addressed issues besides consolidation. One such issue was that two, largely identical complaints—Zakinov and Oconer—were filed and served at different times. To provide a single complaint and date for Defendants to respond, the parties stipulated that Zakinov and Oconer "shall either designate a complaint as operative or file a Consolidated Complaint within 45 days after entry of th[e] order." (Ex. E ¶ 8.) The Stipulation included a briefing schedule for Defendants to respond to the Consolidated Complaint. (Id.) For avoidance of doubt, the Stipulation also provided: "If filed, the Consolidated Complaint shall be the operative complaint and shall supersede all complaints filed in any of the actions consolidated herein." (Id.)

When Judge DuBois entered the First Consolidation Order, there were two "actions consolidated herein"—Zakinov and Oconer. Thus, the Consolidated Complaint superseded the

[7] When determining whether an action is removable, California law controls the question of the nature of consolidation. Bridewell, 798 F.3d at 930. Thus, the cases Plaintiffs cite (ECF 18 at 11:2-6) addressing consolidation under the Federal Rules of Civil Procedure are inapplicable. See Hall v. Hall, 138 S. Ct. 1118, 1131 (2018) (holding that actions consolidated under Rule 42 keep their separate character "at least to the extent that a final decision in one is immediately appealable"); Schnabel v. Lui, 302 F.3d 1023, 1035 (9th Cir. 2002) (considering nature of consolidation under Rule 42); J.G. Link & Co. v. Cont'l Cas. Co., 470 F.2d 1133, 1138 (9th Cir. 1972) (concluding that consolidation preserved parties' separate rights under federal law); Int'l Soc'y for Krishna Consciousness, Inc. v. City of Los Angeles, 611 F. Supp. 315, 319 (C.D. Cal. 1984) (same).

complaints in those actions. The First Consolidation Order does not state that the Consolidated Complaint would supersede the complaints in related actions that would be consolidated *in the future*, like Greenwald. Moreover, the Second Consolidation Order does not reference the Consolidated Complaint, let alone state that it supersedes the Greenwald complaint. (Ex. F ¶ 2.)

Interpreting the Orders in the manner Plaintiffs urge would, as Plaintiffs acknowledge, effectively eliminate Greenwald, his claims and his purported class, not merge Greenwald with Ripple Labs. While Defendants have no objection to Greenwald effectively disappearing, a consolidation cannot so affect the parties' substantive rights. See Jud, 111 Cal. App. 2d at 867. It is therefore unreasonable either to interpret Judge DuBois's Consolidation Orders as having that effect or to accept Plaintiffs' ipse dixit that Judge DuBois did not "really intend[]" to consolidate Greenwald with Ripple Labs, despite his unambiguous order doing just that. (ECF 17 at 9:12.) Rather, the Orders consolidating the cases must be taken at face value, and consistent with California law, as merging Greenwald and Ripple Labs so that the complaints are now "treated as one pleading." Camil, 57 Cal. App. 3d at 500.

V. NO "VOLUNTARY ACT" WAS NECESSARY TO MAKE THE ACTION REMOVABLE, BUT A "VOLUNTARY ACT" OCCURRED

Plaintiffs argue that the Second Consolidation Order did not render the Action removable because the Order was not the result of a "voluntary act" they took. (ECF 17 at 7:15-8:15; ECF 18 at 8:11-10:26.) This argument is a red herring. Courts refuse to apply a "voluntary-involuntary" rule in the context of a sua sponte or defendant-sought consolidation that made a case removable. Even if a "voluntary act" were needed (which it is not), Plaintiffs' Stipulation satisfies any "voluntary act" requirement. None of the cases Plaintiffs cite assists their argument here as they all arise in one of two different contexts: either (i) removal under the "mass action" provisions of CAFA or (ii) when diversity jurisdiction arose due to the dismissal of a defendant on the merits.

A. CAFA's "Mass Action" Provision Does Not Apply

CAFA has specific provisions applying to removal of so-called "mass actions" that do not apply here because the cases before the Court expressly fall outside the definition of "mass action." Section 1332(d)(11)(B)(i) defines a "mass action" as "any civil action (**except [a class action]**) in which monetary relief claims of 100 or more persons are proposed to be tried jointly." Excluded from

the definition of a "mass action" is "any civil action in which . . . the claims are joined upon motion of a defendant" or in which "the claims have been consolidated or coordinated solely for pretrial proceedings." 28 U.S.C. § 1332(d)(11)(B)(ii)(II), (IV). Because the definition of "mass action" expressly excludes class actions, the mass action provisions of CAFA do not apply here. See e.g., Tanoh v. Dow Chem. Co., 561 F.3d 945, 955-56 (9th Cir. 2009) (noting that class actions are not subject to CAFA's mass action requirements).

For this reason, Plaintiffs' repeated citations to mass action cases are inapposite. For example, Plaintiffs cite Agnello v. Twin Hill Acquisition Co., 2018 WL 3972022 (N.D. Cal. Aug. 20, 2018), for the proposition that "the proposal to try claims jointly must come from the plaintiffs, not from the defendants." (ECF 17 at 7:15-20; ECF 18 at 8:11-16.) However, Agnello addressed requirements for removal pursuant to CAFA's "mass action" provision. Applying the express statutory requirements, the Agnello court concluded that removal was improper where "Plaintiffs did not intend to propose a joint trial." Agnello, 2018 WL 3972022 at *7. Such a case does not apply here in the class action context. See Tanoh, 561 F.3d at 955-56.

Plaintiffs' other cases likewise address the statutory definition of "mass action" and are therefore inapplicable. See, e.g., Dunson v. Cordis Corp., 854 F.3d 551, 557 (9th Cir. 2017) (removal improper under CAFA's mass action provision because plaintiffs' request for a bellwether-trial did not amount to a proposal to try their claims jointly); Corber v. Xanodyne Pharm., Inc., 771 F.3d 1218, 1223 (9th Cir. 2014) (removal under CAFA's mass action provision was proper because plaintiffs' petitions for coordination in state court were a proposal to have their claims tried jointly); Tanoh, 561 F.3d at 955-56 (removal under CAFA's mass action provision improper where defendant argued that actions could be combined to qualify as a mass action); Rice v. McKesson Corp., 2013 WL 97738, at *2 (N.D. Cal. Jan. 7, 2013) (removal under CAFA's mass action provision improper because plaintiffs' petition for coordination was "bereft of any explicit proposal" to have their claims tried jointly).

Notably, the provisions of CAFA addressing the removability of class actions, as opposed to "mass actions," do *not* include any similar prohibitions on the removal of consolidated cases. See 28 U.S.C. § 1332(d)(1)-(10). The fact that Congress explicitly conditioned the removal of mass actions on the plaintiffs seeking a joint trial, but explicitly *excluded* class actions from that same requirement,

implies that Congress did not intend to apply any similar limitation on the removal of consolidated class actions. See Russello v. United States, 464 U.S. 16, 23 (1983) ("[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." (alteration in original)). Therefore, if anything, Plaintiffs' "mass action" cases support Defendants' position.

B. The Voluntary-Involuntary Rule Is Inapplicable Here

Plaintiffs' reliance on the "voluntary-involuntary" rule is no more availing. The voluntary-involuntary rule developed in cases examining whether a case became removable when a non-diverse defendant was dismissed from a case. See Self v. Gen. Motors Corp., 588 F.2d 655, 657-58 (9th Cir. 1978). For example, the United States Supreme Court held that a case could be removed if the plaintiff voluntarily dismissed a non-diverse defendant, Powers v. Chesapeake & Ohio Ry., 169 U.S. 92, 101-02 (1898), but it could not be removed if the defendant were involuntarily dismissed after a directed verdict, Whitcomb v. Smithson, 175 U.S. 635, 637-38 (1900). Eventually, the rule became that "only a voluntary act of the plaintiff could bring about removal to federal court." Self, 588 F.2d at 658.

In Self, however, the court clarified that the "voluntary act" is not an independent prerequisite for removal. The voluntary-involuntary rule is just a restatement of the familiar "well-pleaded complaint rule" from Louisville & Nashville Railroad Co. v. Mottley, 211 U.S. 149 (1908), applied in the context of removal. See Self, 588 F. 2d at 657-58. The Self court concluded: "the voluntary-involuntary rule is based on a formalistic approach to pleadings similar to the Mottley line of cases and applies to the diversity requirement of 28 U.S.C. § 1332 in the same fashion that Mottley applies to the federal question requirement of 28 U.S.C. § 1331." Id. at 658. Thus, the "voluntary-involuntary rule" just means that, when assessing if an action is removable based on diversity, the court looks only to the "plaintiff's complaint and the context in which it is found," not to defenses or subsequent developments, such as a dismissal of a defendant on the merits. Id. at 659-60.

This rule generally has not been extended to other contexts in which a court order or other change creates the foundation for federal jurisdiction. See Thompson v. Target Corp., 2016 WL 4119937, at *8 n.7 (C.D. Cal. Aug. 2, 2016) (refusing to extend rule). Indeed, every case Plaintiffs cite

addresses whether diversity jurisdiction arose when a non-diverse defendant was eliminated from a case; ***none*** address whether consolidation can make a case removable. See Dunkin v. A.W. Chesterson Co., 2010 WL 1038200, at *3 (N.D. Cal. Mar. 19, 2010) (remanding action where the non-diverse defendant had not been dismissed at time of removal); Abeyta v. Raytheon Space & Airborne Sys. Co., 2008 WL 11338842, *2 (C.D. Cal. June 12, 2008) (non-diverse defendants dismissed by stipulation was equal to dismissal on the merits because change in the law would have led to the dismissal); Cohen v. GTE Gov't Sys. Corp., 1993 U.S. Dist. LEXIS 7914, *2 (N.D. Cal. Apr. 6, 1993) (remanding action upon state court's order dismissing the non-diverse defendants); Camino Camper of San Jose, Inc. v. Winnebago Indus., Inc., 715 F. Supp. 964 (N.D. Cal. 1989) (remanding action because the court-ordered dismissal was an involuntary act).[8]

In fact, a consolidation may make a case removable—even when ordered sua sponte or sought by the defendant—because removal based on a consolidation order does not offend the well-pleaded complaint rule. In these situations, removal is still based only on a review of the complaints viewed together. See, e.g., MTBE, 399 F. Supp. 2d at 355 (state court sua sponte consolidation order rendered previously non-removable action removable); Tonyco, Inc. v. Equity Mktg., Inc., 2000 WL 654957, at *3 (E.D. Mich. Apr. 25, 2000) (noting had the actions been consolidated in state court, as opposed to federal court, removal would have been appropriate); Barker v. Hartford Fire Ins. Co., 100 F. Supp. 1022, 1023 (E.D. Ky. 1951) (removal proper after sua sponte consolidation).

In Parkhill Produce Co. v. Pecos Valley Southern Railway Co., 196 F. Supp. 404, 406 (S.D. Tex. 1961), impliedly overruled in part on other grounds, Weems v. Louis Dreyfus Corp., 380 F.2d 545, 547 (5th Cir. 1967), the court rejected the argument that the voluntary-involuntary rule precluded removal after two cases were consolidated over the plaintiff's objection. The court reasoned: "The order of consolidation in our cases was not on any point on the merits of the same. For this Court to

[8] Plaintiffs' other cases are inapposite or not good law. (ECF 17 at 8:10-13; ECF 18 at 8:19, 10:22-26.) Welgs v. Dolan, 2011 WL 3444281, at *1 (N.D. Ohio Aug. 8, 2011), involved a defendant removing an action from New York state court to the Northern District of Ohio, violating the statute that requires removal "to the district court of the United States for the district and division embracing the place where such action is pending." Pineda v. Bank of Am., N.A., 2011 WL 1134467, at *3 (N.D. Cal. Mar. 28, 2011), involved a defendant who waived the ability to remove. Finally, in Goodman v. Wells Fargo Bank, N.A., 2014 WL 12626334 (C.D. Cal. July 1, 2014), the court concluded that intervening Ninth Circuit authority was not a voluntary act making the action removable, but that decision was vacated on appeal. Goodman v. Wells Fargo Bank, N.A., 602 F. App'x 681 (9th Cir. 2015).

permit a remand on the basis that the consolidation order making the causes removable was granted over plaintiff's objection, would defeat the purpose of [28 U.S.C. § 1446(b)] and would thwart the right of a trial in a federal court when the jurisdictional amount permits." Id. at 406; see also Bley v. Travelers Ins. Co., 27 F. Supp. 351, 358 (S.D. Ala. 1939) (consolidation of two suits on defendant's motion merged them into one, effectively commencing a new action that became removable, and rejecting plaintiff's argument that consolidation was "involuntary"); Nat'l Union Fire Ins. Co. v. Chesapeake & O. Ry. Co., 4 F. Supp. 25, 32 (E.D. Ky. 1933) (consolidation rendered suit removable and rejecting argument that the plaintiffs had a "right to prosecute each suit to a final decision in their own way," concluding that "they did not have such right;" "the court had the right to order them consolidated and thereby put an end to the separate actions and bring into existence a single [removable] action").[9]

Defendants' removal is likewise based solely on the allegations in the well-pleaded Greenwald and Ripple Labs complaints. The legal effect of the Second Consolidation Order, which, like the order in Parkhill, resolves nothing on the merits, is to treat the actions as though they were originally brought as one proceeding; the two complaints are merged and considered one pleading. But nothing outside that pleading, no decision on the merits or action by defendants, forms the basis of jurisdiction. Thus, the voluntary-involuntary rule does not apply and does not assist Plaintiffs in defeating removal.

In any event, the Second Consolidation Order "is traceable to a voluntary act by Plaintiff[s]." Thompson, 2016 WL 4119937, at *8 n.7. As shown above, supra Part IV.A, Plaintiffs voluntarily agreed to the Stipulation, which applies by its express terms to related actions and which contemplates that related actions remanded to state court, such as Greenwald, would be consolidated with Ripple Labs. (Ex. E ¶¶ 14, 15.) Defendants filed the Notice of Related Cases notifying the court of Greenwald for purposes of consolidation. Plaintiffs did not object. Plaintiffs' agreement to the

[9] For the same reason, Plaintiffs are wrong that they have unfettered entitlement "to determine the nature and scope of the case to be advanced." (ECF 18 at 10:15-16.) Plaintiffs have a right to decide which claims to assert. In Chow v. Hirsch, 1999 U.S. Dist. LEXIS 3010, at *12-13 (N.D. Cal. Feb. 22, 1999), upon which Plaintiffs rely (ECF 18 at 17:10-16), for example, the court granted the plaintiff leave to amend to drop a federal claim from her lawsuit, noting she could choose "between her federal claims and her right to have the case heard in state court." Chow, 1999 U.S. Dist. LEXIS 3010, at *7. However, Plaintiffs do not have a right to insist on separate pre-trial and trial proceedings for those claims, causing cost, inefficiencies and potential conflicting judgments to Defendants and the Court in order to have their case heard in state court.

stipulation, decision not to object to the Notice, and the subsequent consolidation gave rise to the circumstances for removal. That satisfies as a voluntary act traceable to Plaintiffs.[10]

VI. NO EXCEPTION TO CAFA JURISDICTION APPLIES

Plaintiffs also argue that, if considered independently, Ripple Labs is not removable because certain exceptions to CAFA jurisdiction apply. (ECF 18 at 12:12-15:17.) Defendants do not contend that Ripple Labs is removable absent its consolidation with Greenwald, so the Court need not reach these arguments. However, Plaintiffs' arguments fail.

A. The Local Controversy Exception Does Not Apply

Plaintiffs fail to show that the "local controversy" exception to CAFA jurisdiction bars removal. The exception requires that more than two-thirds of proposed class members are California citizens. 28 U.S.C. § 1332(d)(4)(A)(i)(I). Looking to both the Ripple Labs and Greenwald complaints, this requirement is not met. The putative class in Greenwald consists of "all persons or entities who purchased XRP since July 3, 2015," without any geographic limitation. (Ex. B ¶ 87.) Plaintiffs do not dispute that this means there are putative class members throughout the world. (ECF 2 ¶ 19.) Thus, there is no basis to conclude that "greater than two-thirds" of the putative class members are California citizens.

Similarly, Plaintiffs cannot meet the requirement that the "principal injuries resulting from the alleged conduct" were incurred in California. 28 U.S.C. § 1332(d)(4)(A)(i)(III). Plaintiffs rely on Benko v. Quality Loan Service Corp., 789 F.3d 1111 (9th Cir. 2015) (ECF 18 at 14:22-24), where the class was comprised of Nevada plaintiffs who took out loans against their Nevada property and then sued for violations of Nevada law involving foreclosures of their property. Id. at 1115. Thus, "[t]he alleged misconduct took place exclusively in the state of Nevada." Id. at 1119. Here, because the putative class consists of persons throughout the world (ECF 2 ¶ 19), Plaintiffs cannot contend that the principal injuries were incurred in California.

[10] Plaintiffs argue that Greenwald was not a party to or served with the Stipulation, and therefore the stipulation was not a "voluntary" act. (ECF 17 at 3:2-4, 5 n.4; ECF 18 at 9:16-18.) However, Greenwald filed the Stipulation as part of his Motion to Remand, see Ex. D to Decl. of John T. Jasnoch in Support of Plfs' Mot. to Remand, Greenwald v. Ripple Labs Inc., No. 18-cv-04790-PJH (ECF. 15-2) (N.D. Cal. Sept. 7, 2018), so he was clearly aware of it. Moreover, Plaintiffs cite no authority to suggest that a "voluntary" act requires ***all*** plaintiffs in an action to assent.

Finally, Plaintiffs fail to satisfy the requirement that "during the 3-year period preceding the filing of that class action, ***no other class action*** has been filed asserting the same or similar factual allegations against any of the defendants on behalf of the same or other persons." 28 U.S.C. § 1332(d)(4)(A)(ii). As shown above, Part II.A, Coffey asserted the exact claims asserted here and was filed before Plaintiffs filed any of their actions, thereby making the exception inapplicable.

B. The Securities Exception Does Not Apply

Plaintiffs argue that Ripple Labs falls within the exception to CAFA jurisdiction for actions that solely involve "a claim . . . that relates to the rights, duties (including fiduciary duties), and obligations relating to or created by or pursuant to any security (as defined under section 2(a)(1) of the Securities Act)." 28 U.S.C. §§ 1332(d)(2)(9)(C), 1453(d)(3); (ECF 18 at 15:2-17.) However, the so-called "securities exception" to CAFA jurisdiction does not apply to claims seeking to enforce the rights of plaintiffs as "purchasers" of securities rather than as "holders" of securities. Eminence Inv'rs, L.L.L.P. v. Bank of N.Y. Mellon, 782 F.3d 504, 508-09 (9th Cir. 2015). Plaintiffs' claims arise from their alleged purchases of XRP, not from their alleged rights as holders of XRP. (Ex. A ¶¶ 1-2, 65, 80; Ex. B ¶¶ 1-3, 82.) Therefore, the securities exception does not apply.

VII. PLAINTIFFS ARE NOT ENTITLED TO ATTORNEYS' FEES

Plaintiffs' contention that they are entitled to attorneys' fees and costs because Defendants' position is "far from supportable" is wrong. (ECF 18 at 17:18-22.) Courts award attorneys' fees under 28 U.S.C. § 1447(c) "only where the removing party lacked an objectively reasonable basis for seeking removal." Jordan, 781 F.3d at 1184. That standard has not been met here. As demonstrated above, Defendants' analysis herein is correct, supported by law, and warrants denial of Plaintiffs' Motions.

VIII. CONCLUSION

For the reasons stated herein, the Court should deny Plaintiffs' Motions to Remand. If the Court, however, is inclined to grant Plaintiffs' Motions to Remand, Defendants respectfully request a stay while Defendants appeal the remand order to the Ninth Circuit.

DATED: December 28, 2018

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

By: */s/ Peter B. Morrison*
Peter B. Morrison
Attorney for Defendants